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In The

Supreme Court of the United States

October Term, 1995

THOMAS STOUTENBOROUGH and SELF-HELP FOR HEARING IMPAIRED PERSONS, Individually on their own behalf and as Representatives on behalf of all other members of the class similarly situated,

Petitioners,

vs.

NATIONAL FOOTBALL LEAGUE, INC.; CLEVELAND BROWNS FOOTBALL CLUB, INC., N.B.C., INC., aka National Broadcasting Company, Inc.; A.B.C., INC., aka American Broadcasting Company, Inc.; C.B.S., INC., aka Columbia Broadcasting System, Inc.; W.K.Y.C. – T.V., Channel 3; W.J.W. – T.V., Channel 8; W.E.W.S. – T.V., Channel 5,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

CHRISTOPHER D. KUEBLER
Counsel of Record
O'BRYAN BAUN P.C.
Attorneys for Petitioners
401 South Woodward
Suite 320
Birmingham, Michigan 48009
(810) 258-6262

QUESTION PRESENTED

Is the scope of the public accommodations and telecommunications provisions of the Americans With Disabilities Act, Title 42 U.S.C. § 12101, *et seq.*, broad enough to encompass the telecommunication of live sporting events which are already programmed on television and broadcast from places of public accommodation to places of public accommodation, thus prohibiting the National Football League, its member clubs, and broadcast networks and their local affiliates from implementing the "black-out" rule via a licensing agreement which imposes a discriminatory impact on hearing impaired people who want technological access to the live sporting event in places of public accommodation?

INTERESTED PARTIES

The following persons and entities were parties below and have an interest in the outcome of this case:

Thomas Stoutenborough

Self-Help for Hearing Impaired Persons

National Football League, Inc.

Cleveland Browns Football Club, Inc.

N.B.C., INC., aka National Broadcasting Company

A.B.C., INC., aka American Broadcasting Company

C.B.S., Inc., aka Columbia Broadcasting Company

W.K.Y.C. - T.V., Channel 3

W.J.W. - T.V., Channel 8

W.E.W.S. - T.V., Channel 5

STATEMENT OF PARENT, SUBSIDIARY AND AFFILIATE CORPORATIONS

Petitioners Thomas Stoutenborough and Self-Help for Hearing Impaired Persons are *not* affiliated with any corporations.

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Respondents.

Petition for Writ of Certiorari To The United States Court of Appeals For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Thomas Stoutenborough and Self-Help for Hearing Impaired Persons petition for a Writ of Certiorari to review the Opinion of the United States Court of Appeals for the Sixth Circuit which was rendered on July 14, 1995.

OPINIONS BELOW

The United States District Court for the Northern District of Ohio, Eastern Division, issued an Order which granted the Respondents' collective Motions for Summary Judgment on May 18, 1994. The Opinion of the District Court is unreported. The United States Court of Appeals for the Sixth Circuit affirmed the Order of the District Court on July 14, 1995. The Opinion of the Sixth Circuit is reported at 59 F.3d 580.

STATEMENT OF JURISDICTION

Petitioners seek review of the Sixth Circuit opinion entered on July 14, 1995. This Petition for Writ of Certiorari is timely filed within ninety days of the entry of the Order of July 15, 1995, which affirmed the District Court's grant of the Respondents' collective Motions for Summary Judgment. This Court's jurisdiction is invoked pursuant to Title 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 2, Clause 1, of the United States Constitution, provides in relevant part that "the judicial power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States . . ."

The Americans With Disabilities Act, Title 42 U.S.C., provides in relevant part:

Section 12101: "Congress finds that — . . . (3) "Discrimination against individuals with disabilities persists in such critical areas as . . . communications; . . . (5) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminary effects of . . . communication barriers, . . . failure to make modifications to existing . . . practices . . . , segregation and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities; (6) . . . people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially . . . ; (8) . . . The nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living . . . ."

Section 12101(b): The ADA was enacted "To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"

Section 12102(1): "The term 'auxiliary aids and services' includes — (a) . . . other effective methods of making aurally delivered materials available to individuals with hearing impairments; . . . (c) acquisition or modification of equipment or devices; and (d) other similar services and actions."

Section 12131(2): "The term 'qualified

individual with a disability' means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of . . . communication . . . barriers or the provision of auxiliary aids and services meets the essential eligibility requirements for the receipt of services or the participation of programs or activities provided a public entity."

Section 12181: "Commerce. The term 'commerce' means . . . communication — (a) Among the several states; . . . (c) Between points in the same state but through other state . . . ."

Section 12181(7): "The following private entities are considered public accommodations for purposes of this subchapter, if the operation of such entities affect commerce — (a) A restaurant, bar or other establishment serving food or drink; (b) A . . . stadium, or other place of . . . entertainment; . . . (1) . . . or other place of . . . recreation."

Section 12182(a): "No individual shall be discriminated against on the basis of a disability in the full and equal enjoyment of the . . . services, . . . privileges, advantages . . . of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

Section 12182(b)(1)(a): "(i) It shall be

discriminatory to subject an individual or class of individuals on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, to a denial of the opportunity of the individual or class to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of an entity. (ii) It shall be discriminatory to afford an individual or class of individuals, on the basis of a disability or disabilities of such individual or class, directly, or through contractual, licensing, or other arrangements, with the opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation that is not equal to that afforded to other individuals. (iii) It shall be discriminatory to provide an individual or class of individuals, on the basis of a disability or disabilities of such individual or class directly, or through contractual, licensing or other arrangements with a good, service, facility, privilege, advantage or accommodation that is different or separate from that provided to other individuals, ..."

Section 12182: "(ii) A failure to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such . . . services, facilities, privileges, advantages, or accommodations to individuals with disabilities; (iii) A failure to take such steps as may be necessary to insure that no

> individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services . . . ; (iv) A failure to remove . . . communication barriers that are structural in nature."
>
> Section 12201: "Nothing in this chapter shall be construed to invalidate or limit the remedies, rights and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities that are afforded by this chapter."

The Communications Act, Title 47 U.S.C. which was amended by Part IV of the ADA ["Television Decoding Circuitry Act"], provides in relevant part:

> Section 151: "For the purposes of regulating interstate . . . commerce in communication by wire and radio so as to make available, as far as possible, to all the people of the United States . . . ."
>
> Section 153: "(a) 'Wire communication' or 'communication by wire' means the transmission of . . . signals, pictures and sounds of all kinds by aid of wire, cable, or other like connection between the points of origin and reception of such transmission, including all instrumentalities, facilities, apparatus and services (among other things,

> the receipt, forwarding and delivery of commuications) incidental to such transmission; (b) 'Radio communication' or 'communication by radio' means the transmission by radio of . . . signals, pictures and sounds of all kinds, including all instrumentalities, facilities, apparatus and services (among other things, the receipt, forwarding and delivery of communications) incidental to such transmission."
>
> Section 303: "(1) To the fullest extent made possible by technology, deaf and hearing-impaired people, should have equal access to the television medium."

STATEMENT OF THE CASE

A. District Court Jurisdiction

Jurisdiction of the United States District Court, Northern District of Ohio, Eastern Division, was based upon Title 28 U.S.C. § 1331 and Title 42 U.S.C. §12101 *et seq*.

B. Procedural History

On September 15, 1993, Petitioners Thomas Stoutenborough and Self-Help for Hearing Impaired Persons, a non-incorporated association of hearing handicapped individuals, filed a Complaint alleging a violation of the Americans With Disabilities Act [hereinafter "ADA"] on their own behalf, and on behalf of putative class members, in the U.S. District Court for the Northern District of Ohio, Eastern Division. On September 30, 1993, Petitioners filed their First Amended Complaint Complaint pursuant to Federal Civil Rule 15(A).

On October 29, 1993, Respondents N.F.L., Inc., and Cleveland Browns Football Club, Inc., filed their Joint Motion to Dismiss the First Amended Complaint. On November 12, 1993, Respondents N.B.C., Inc., A.B.C., Inc., C.B.S., Inc., W.K.Y.C. – T.V. 3, and W.E.W.S. – T.V. 5 filed their Joint Motion to Dismiss the First Amended Complaint. On December 7, 1993, Respondents W.J.W. – T.V. 8 filed its Motion to Dismiss the First Amended Complaint.

On January 18, 1994, Petitioners filed their Combined Brief in Opposition to the Respondents' several Motions to Dismiss. On February 2, 1994, Respondents N.F.L., Inc., and Cleveland Browns Football Club, Inc., filed a Reply to the Petitioners' Brief in Opposition. On February 7, 1994, Petitioners' filed a Motion for Leave to File a Surreply Brief. On May 9, 1994, Petitioners and Respondents filed a Stipulation pursuant to Federal Civil Rule 41(a)(1) which voluntarily dismissed without prejudice C.B.S., Inc., and W.J.W. – T.V. 8. Accordingly, they are no longer parties to these proceedings.

On May 18, 1994, the District Court granted the Respondents' several Motions to Dismiss pursuant to Federal Civil Rule 12(b)(6) and dismissed all claims set forth in Petitioners' First Amended Complaint. On June 14, 1994, Petitioners timely filed their Notice of Appeal of the District Court's Judgment which dismissed the First Amended Complaint.

On June 8, 1995, oral argument concerning all issues presented was heard by the Sixth Circuit Court of Appeals. On July 14, 1995, the Sixth Circuit Court of Appeals entered judgment on the appeal and affirmed the judgment of the District Court which held that the Petitioners' First Amended Complaint failed to state a claim for which relief could be granted under the Americans With Disabilities Act.

REASONS FOR GRANTING THE WRIT

I.

INTRODUCTION

The Petitioners' First Amended Complaint is predicated upon Congress' mandate, as set forth in Title III of the ADA [Public Accommodations], that auxiliary aids or services must be provided by private entities which are engaged in interstate commerce in order to make aurally delivered materials [*i.e.*, technological communication transmissions of programmed live sporting events held at places of public accommodation], which are provided as a service in places of public accommodation, equally available to hearing impaired/deaf individuals who attend public accommodations [*i.e.*, restaurants, bars, etc.]. The Petitioners sought resolution of their claims under the ADA itself, and as it is modified by other statutes, notably the Communications Act and the Civil Rights Act of 1990.

The Petitioners are hearing impaired or totally deaf members of society. These individuals have been declared by Congress to form a demonstrable class of individuals who have been invidiously discriminated against in the past. Congress intends to integrate, as far as possible, hearing handicapped individuals into the public mainstream. Congress' intent can flourish only if the Respondents' Black-Out Rule, and the telecommunications licensing agreements which they have entered into to implement the Rule [which effects a discriminatory impact in places of public accommodation], are declared unlawful. The Black-Out Rule and the telecommunications licensing agreements which impliment the Rule impose a disparate impact upon this Class of individuals and such discrimination must be prohibited by the express language of the ADA.

When NFL home games are not sold out at least seventy-two [72] hours in advance of game time, the programmed television event is not transmitted in and around the home team's city pursuant to certain telecommunication licensing agreements which the Respondents have entered into. The Black-Out Rule unlawfully discriminates against the Petitioners in a disproportionate way because they have no other means of technologically accessing the game while they are visiting places of public accommodation. The Respondents have already programmed and broadcast the games on television over public airwaves to places of public accommodation. These transmissions, when the Black-Out Rule is invoked, deprives the Petitioners of any technological access to the game in places of public accommodation because they do not have the physical capability of accessing the game on an alternate technology device located in places of public accommodation [*i.e.*, listening on radio].

Without equal access to some form of technological transmission of the game, the Petitioners are forced to choose options which hearing individuals do not have to choose in order to integrate themselves into a societal activity which is enjoyed by non-handicapped individuals. When the Black-Out Rule is invoked, Petitioners are forced to travel far distances to obtain some form of telecommunication of the event, required to personally attend a game at a stadium, or they simply stay at home, isolated and segregated from society, results which Congress intended to avoid by passage of the ADA. The Petitioners do not have substantially "equal" technological access to the sporting event which has been programmed and broadcast on television. Although identical access is not required, substantially equal access definitely is.

This discriminatory impact in places of public accommodation, which can only occur via licensing agreements,

is precisely what the Petitioners seek to prohibit. The Petitioners assert that Congress's sweeping mandate to integrate hearing impaired persons into mainstream society is broad enough in scope to include the Black-Out Rule within the language of the ADA and prohibit the discriminatory impact concerning technological access to a programmed live sporting event which results in places of public accommodation when the Black-Out Rule is invoked. If the Respondents desire to invoke their Black-Out Rule, they should be required to alter their practices or make accommodations, either through continued television transmission, visual radio-tape transmission or some other means, to prevent the discriminatory impact in places of public accommodation. But in all cases, the Respondents must provide the accommodation or auxiliary aid since it is they, through their collective practices, who cause the discriminatory impact to be felt in places of public accommodations. The ADA does apply to the Black-Out Rule.

II.

IMPORTANT QUESTION OF FEDERAL LAW WHICH SHOULD BE SETTLED BY THIS COURT

This Petition for Writ of Certiorari presents a unique opportunity for this Court to review and determine, for the first time, the scope of the ADA within the context of radio and television transmission, the rapidly advancing technology associated with the telecommunications industry and the increasing importance of recreation and entertainment in modern society. Pursuant to Part III, Rule 10.1(c) of the Rules of the Supreme Court of the United States, it is proper to accept a Petition for Writ of Certiorari where, as here, a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

This Court has neither visited nor tested the scope of the

ADA, particularly within the context of the important area of radio/telecommunications. It must do so. The issue presented is highly important to the estimated 25,000,000 Americans who, according to Congress, suffer from some form of hearing impairment and may suffer discrimination in the context of telecommunications. A definitive decision will profoundly impact these handicapped individuals, especially concerning their rights under the ADA within the context of access to technology, multi-media, entertainment and telecommunications, matters which affect interstate commerce and impact even non-handicapped U.S. citizens.

In addition, the rapid and fundamental changes in telecommunciation technology, the way it impacts the way we do business and engage in interstate commerce, and how we accept entertainment and education, demands that this Court perceive and consider new ways in which discrimination may be created by technology. Accordingly, this Court must take the present opportunity to craft new judicial guidance which will preclude or remedy any discrimination that may arise from the new ways society now engages in business in the information age. This Court can do so by properly interpreting the statutory provisions and determining the scope of the ADA in the context of telecommunications in public accommodations. The ultimate goal that will be accomplished by review is the integration of hearing impaired persons into this rapidly changing information/ communication society. If the language of the ADA is not broad enough to encompass the Black-Out Rule, the social disadvantages and attendant isolation which Congress clearly seeks to eliminate, will persist in the area of technology/ communication.

The regulations promulgated under the ADA, in addition to the Television Decoding Circuitry Act [Part IV, ADA], clearly establish that the public accommodations and telecommunications provisions of the ADA are broad enought to encompass the type

of discriminatory impact that arises in places of public accommodation from the Black-Out Rule which is implimented via licensing agreements that involve live sporting events which are performed in places of public accommodations [*i.e.*, stadiums] and broadcast to places of public accommodations.

The sweeping mandate and the protections for hearing handicapped individuals provided by Congress through the enactment of the ADA should be properly [*i.e.*, liberally] construed to conform with its remedial nature. The Sixth Circuit Court of Appeals errored by rigidly interpreting the language and narrowly and restrictively applying its provisions. It failed to apply the long standing statutory construction rules and plain language of the Act in conjunction with Congress' sweeping mandate. This Court must review the Sixth Circuit's decision and determine the proper scope of coverage of the ADA; whether the provisions of the ADA apply to technology transmissions and policies actuated by license which impose a discriminatory impact on hearing impaired in places of public accommodation. Dissallowance undermines congressional intent and weakens all remedial laws aimed at the expansion and preservation of civil rights of citizens with handicaps and who may bear other indicia of a suspect class.

Without review, federal courts will be hopelessly confused. Review will promote uniformity of this major piece of legislation and allow individuals and businesses to more clearly understand the perameters of their rights and obligations in the context of telecommunications and entertainment in places of public accommodation. This Court's guidance represents the only chance to create a uniform rule of law that will ensure a consistent test under the ADA regardless of the forum where a claim is filed.

The Sixth Circuit improperly limited the scope of the ADA by applying an overly restrictive interpretation of this remedial

act. It utilized a statutory construction method which conflicts with established precedent. This form of review led to an improper conclusion and the methodology of the Sixth Circuit's review itself must be examined.

The "service" at issue concerns technological access to a live sporting event which is already programmed on television and radio and which is being provided as a service in places of public accommodation [bars, hotels, etc.]. Auxiliary aids or other effective means of making this aurally delivered material must be made available to the Petitioners in places of public accommodation since the Black-Out Rule, by license or contract, causes a discriminatory impact in places of public accommodation [bars, hotels, etc.]. The Respondents are subject to the provisions of the ADA since the football clubs fall within the definition of "public accommodations" and the broadcasters bind themselves to the provisions of the ADA as licensees of these "public accommodations". They all must comply with the ADA when they broadcast their games to other "places" of public accommodation. The ADA cannot be read in isolation from the existing technology which is used to provide services/benefits in places of public accommodation. Since the ADA references such technology, the methods and processes of providing services/ benefits in places of public accommodation must be considered. The Sixth Circuit errored because its decision allows the Respondents to do through the back door that which they are prohibited from doing through the front door.

Since Petitioners' action involved a case of first impression in the United States concerning a recently enacted remedial statute, the Sixth Circuit should have taken a more tolerant view of the Petitioners' novel legal theories and their efforts to state a claim should have been indulged. Because the ADA is a new and untested enactment, and the law based thereon is uncertain, the allegations should have been viewed in light most favorable to

the Petitioners. Their claims and legal theories must be given wider latitude by this Court than that provided by the Sixth Circuit. *See Kennedy v. Silas Mason,* 334 U.S. 249 (1948); *Accord, Pollar v. C.B.S., Inc.,* 368 U.S. 464 (1962). *See also, Jenkins v. McKeithen,* 395 U.S. 411 (1969), and *Scheuer v. Rhodes,* 416 U.S. 232, 236 (1974).

Section 12101 clearly and succinctly states that the ADA was intended by Congress to afford hearing impaired individuals, as qualified handicapped persons, equal access to existing programmed telecommunications, including those of sporting events which are performed at places of public accommodation and which are televised to, and received as a service/benefit in, places of public accommodation over the public airwaves. Telecommunications are an essential and growing element of modern society. Equal access to existing telecommunications is vital if hearing impaired/deaf individuals are to become equal members of society as Congress mandates.

The broad scope of the ADA cannot be denied. The sweeping language of the ADA discloses Congress' intent to terminate discrimination in communication services and outlines Congress' mandate that hearing impaired/deaf individuals be afforded equality and full participation in those privileges, services and events which are provided to and enjoyed by non-handicapped individuals.

The ADA must be interpreted in a manner which is consistent with the liberal construction afforded to the Rehabilitation Act, Title 29 U.S.C. § 794 [Section 504]. The Rehabilitation Act has been construed as a remedial statute which rectifies the effects of discrimination; it is given a liberal and expansive construction. The Rehabilitation Act — hence the ADA — represents an effort, which is closely modeled upon the Civil Rights Act already in force, to offer handicapped

individuals an opportunity to pursue employment, educational and recreational goals free of additional handicaps of discrimination against them. *See, e.g., Paralyzed Veterans of American v. Civil Aeronautics Board*, 752 F.2d 694 (D.C. App. 1985), *cert. granted*, 474 U.S. 918, 106 S. Ct. 244, 88 L. Ed. 2d 253, *motion granted*, 474 U.S. 992, 106 S. Ct. 403, 88 L. Ed. 2d 355, *rev'd on other grounds*, 477 U.S. 597, 106 S. Ct. 2705, 91 L. Ed. 2d 494. The Sixth Circuit should have afforded such a liberal interpretation to the ADA, as was properly indicated. Such an interpretation would allow the ADA to encompass the Black-Out Rule and the discrimatory impact in places of public accommodation that is associated with its implimentation.

Congress intends that the full panoply of remedies be available to private plaintiffs under the Rehabilitation Act, including monetary damages. *See Nelson v. Thornburg*, 567 F. Supp. 369 (E.D. Pa. 1983), *aff'd without opinion*, 732 F.2d 146 (3rd Cir., 1984), *cert. denied*, 469 U.S. 1188, 105 S. Ct. 955, 83 L. Ed. 2d 962 (1984). The Rehabilitation Act — hence the ADA — is designed to put individuals with disabilities on equal footing with non-disabled people. *Wilbur v. Brady*, 780 F. Supp. 837 (D.C. Col. 1992).

The ADA must also be construed in the same fashion as the Rehabilitation Act and the Civil Rights Act; it must be given a broad and liberal interpretation which does not limit words to their standard definitions. For example, in *Daniel v. Paul*, 395 U.S. 298, 89 S. Ct. 1697, 23 L. Ed. 2d 318, this Court declined to take a restrictive view of the interpretation to be given to the term "public accommodations" under the Civil Rights Act. This Court recognized that most of the discussions in Congress regarding coverage of Title II of the Civil Rights Act, which proscribes discrimination in places of public accommodation, focused on places of spectator entertainment rather than recreational areas. Nevertheless, this Court held that it did not follow that the scope

of the Civil Rights Act, which defined places of "public accommodation" as including "any motion picture house, theater, concert hall, sports arena, stadium, or other place of exhibition or entertainment", should be restricted to the primary objects of the Congress' concern when the natural reading of its language would call for far broader coverage. In light of the overriding purpose of Title II, to remove the daily affront and humiliation involved in the discriminatory denials of access to facilities ostensibly open to the general public, this Court held that the statutory language "place of entertainment" should be given full effect according to its generally accepted meaning and applied to recreational areas. Such a liberal interpretation, properly given to the ADA, would allow it to encompass the Black-Out Rule.

This Court has repeatedly and unwaiveringly affirmed the proposition that remedial anti-discriminatory legislation must be given a broad interpretation even when it appears that a strict definitional interpretation might be reasonable. Under the Civil Rights Act — hence the ADA — the term "public accommodation" is not limited to the specific areas set forth in the statute. Additional places of "public accommodation" may be added to the list of places specifically designated in the statute as "public accommodations". Accordingly, the sporting ["entertainment"] event which the Respondents broadcast from places of public accommodation to places of public accommodation over public airwaves must also be considered to fall within the meaning of the term "public accommodation" under the ADA.

When interpreting any statute, Congress' intent is the controlling factor since that intent constitutes the law. *See Jones v. New York Guaranty and Indemnity Co.*, 101 U.S. 622, 25 L. Ed. 1030 (1938). The primary rule of construction of statutes is to ascertain and declare Congress' intent and to carry such intent

into affect to the fullest degree possible consistent with that intent. *United States v. American Trucking Association,* 310 U.S. 534, 60 S. Ct. 1059, 84 L. Ed. 1345 (1944), *rehearing denied,* 311 U.S. 724, 61 S. Ct. 53, 85 L.Ed. 472 (1945); *Weinberger v. Hynson, Westcott & Dunning, Inc.,* __ U.S. __, 93 S. Ct. 2469, 37 L. Ed. 2d 207 (1975).

When interpreting the ADA, a construction must be given which is consistent with the intent and purpose of the statute, even if that construction is not within the literal meaning of the statute. *James v. Rowe,* 674 F. Supp. 332 (D. Kansas 1987). The strict letter of a legislative Act must yield to the evident purpose and spirit of the Act to give effect to the intent of the lawmakers. *In Re: Johnson,* 105 B.R. 352 (S.D. W. Va., 1989). In determining the meaning of the statute, the particular statutory language must not only be reviewed, but also the design of the statute as a whole and to its object and policy. *Crandon v. United States,* 494 U.S. 152, 110 S. Ct. 997, 108 L. Ed. 2d 132 (1990); *Aulston v. United States,* 915 F.2d 584 (10th Cir. 1990), *cert. denied,* __ U.S. __, 111 S. Ct. 2011, 114 L. Ed. 2d 98 (1990). *United States ex rel. Stinson, Lyons, Gerlin & Bustamante, PA v. Prudential Insurance Co.,* 944 F.2d 1149 (3rd Cir. 1991). The inquiry into Congress' intent must encompass the particular language and the broader design of the statute. *Georgetown University Hospital v. Bowen,* 862 F.2d 323 (D.C. Cal., 1988). Congress can enact a statute with a broader scope than the problems and purposes that called the law forth. *Standard Office Building Corp. v. U.S.,* 819 F.2d 1371 (7th Cir. 1989); *Dabel v. Sullivan,* 902 F.2d 559 (7th Cir. 1990). In expounding a statute, the Court must not be guided by a single sentence or a member of a sentence, but must look to the provisions of the whole law and to its object and policy. *Nu Pulse, Inc. v. Schlueter Co.,* 853 F.2d 545 (7th Cir. 1988).

The ADA must be interpreted in a manner that will promote, not defeat, the purposes that Congress sought to achieve. *Crow*

Tribe of Indians v. United States, 657 F. Supp. 573 (D. Mont. 1985), *rev'd,* 819 F.2d 895 (10th Cir. 1986), *aff'd, Montana v. Crow Tribe of Indians,* 484 U.S. 997, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1987). The ADA must be construed to effectuate its purpose as defined by Congress. *Federal Deposit Insurance Corp. v. Isham,* 777 F. Supp. 828 (D. Col. 1991). The Sixth Circuit wrongly interpreted the ADA to the contrary; it defeated the purposes that Congress sought to achieve.

When construing a statute, a court must be guided not only by statutory language, but also by policy considerations behind enactment of the ADA. *In re Big Dry Angus Ranch, Inc.,* 69 B.R. 695 (D. Montana 1987). When the wording of a statute results in excessive rigidity and appears to have resulted from drafting oversight, the statute must be applied in the manner calculated to achieve the purpose its words were clearly intended to obtain. *In re Wedtech Corp.,* 72 B.R. 464 (S.D. N.Y. 1987).

A statute is to be read as whole, because the meaning of statutory language, plain or not, depends on the context. *King v. St. Vincent's Hospital,* __ U.S. __, 112 S. Ct. 570, 116 L. Ed. 2d 578 (1991). The legislative intent is determined by an analysis of the statute as a whole, rather than through scrutiny of isolated portions. *Neeland v. National Collegiate Athletic Association,* 650 F. Supp. 1047 (W.D. Texas 1986), *rev'd,* 850 F.2d 224 (5th Cir. 1987), *reh. denied,* 856 F.2d 191 (1987), *cert. denied,* 488 U.S. 1042, 109 S. Ct. 868, 102 L. Ed. 2d 991 (1988). Each word must be given effect and every effort must be made not to interpret provisions in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous. *Boise Cascade Corp. v. U.S. EPA,* 942 F.2d 1427 (1991). Simply, it is error to read any section of a statute in isolation. *In re Albertson,* 68 B.R. 1017 (W.D. Missouri 1987). Here, it cannot be denied what Congress' intent is: eliminate the type of discrimination arising from application of the Black-Out Rule.

The recent consolidation of the telecommunications industry, the rapid advancement of communications technology and the implications of both, which present new ways of communicating, doing business, providing entertainment and education — ways that could only have been imagined when the ADA was enacted in 1990 —demands a statutory interpretation which allows the ADA to adapt to the anticipated future changes in communications in places of public accommodation. Such a liberal interpretation is necessary to keep pace with discriminatory impacts which may be presented merely by the application of technology — discrimination which may result in ways different than in the past because we do business in ways that are different in the past. The ADA must be allowed to adapt to this changing environment otherwise it will soon be rendered a nullity or illusion, leaving hearing impaired and other handicapped persons without a remedy and isolated in the new environment.

Due to the important mandate set forth in the ADA which requires that auxiliary aids and services be provided in places of public accommodation by the private entities which engage in interstate commerce and who create, by license, a discriminatory impact involving technology services/benefits/privileges in places of public accommodation, a unique opportunity is presented by this Petition for Writ of Certiorari to resolve the scope of the ADA in the essential area of telecommunications.

CONCLUSION

For the foregoing reasons, this Court must heed the words of its former brother, Chief Justice Earl Warren, who eloquently stated:

> It is the spirit and not the form of the law that keeps justice alive.

This Court must grant this Petition for Writ of Certiorari, exercise its jurisdiction, and review the decision of the United States Court of Appeals for the Sixth Circuit to keep justice alive for millions of hearing handicapped American citizens who seek an equal opportunity to enjoy entertainment in places of public accommodation through telecommunications so they may become fully integrated in this rapidly changing society.

Respectfully submitted,

CHRISTOPHER D. KUEBLER
Counsel of Record
O'BRYAN BAUN P.C.
Attorneys for Petitioners
401 S. Woodward, Suite 320
Birmingham, Michigan 48009
(810) 258-6262

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED JULY 14, 1995

No. 94-3664

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS STOUTENBOROUGH, et al.,

Plaintiffs-Appellants,

v.

NATIONAL FOOTBALL LEAGUE, INC., et al.,

Defendants-Appellees.

ON APPEAL from the United States District Court for the Northern District of Ohio

Decided and Filed July 14, 1995

Before: MARTIN and SILER, Circuit Judges; JOINER, District Judge.*

BOYCE F. MARTIN, JR., Circuit Judge. Thomas Stoutenborough and Self-Help for Hearing Impaired Persons, an unincorporated association of individuals with hearing impairments, appeal the district court order granting the defendants' motion to dismiss for failure to state a claim upon

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* The Honorable Charles W. Joiner, United States District Judge for the Eastern District of Michigan, sitting by designation.

which relief can be granted. They argue that the Americans With Disabilities Act, 42 U.S.C. § 12101, et seq., and other federal statutes apply to the National Football League's "blackout rule" and require the defendants to provide some "auxiliary aid or service" to assure that hearing impaired persons have equal access to some form of telecommunication of the affected football games in areas of public accommodation. For the following reasons, we affirm the judgment of the district court.

Stoutenborough is a hearing impaired resident of Cleveland, Ohio and the managing director of Self-Help for Hearing Impaired Persons. On September 15, 1993, Stoutenborough and Self-Help for Hearing Impaired Persons filed a class-action complaint in federal district court against the National Football League, Inc., the Cleveland Browns Football Club, Inc., National Broadcasting Company, Inc., American Broadcasting Company, Inc., Columbia Broadcasting Systems, Inc., W.K.Y.C. - T.V. 3, W.J.W. - T.V. 8, and W.E.W.S. - T.V. 5. The complaint, as subsequently amended, alleged that the National Football League's "blackout rule," which prohibits the live local broadcast of home football games that are not sold out seventy-two hours before game-time, violates the Americans With Disabilities Act of 1990, the Television Decoder Circuitry Act of 1990, the Communications Act of 1934, and the Rehabilitation Act of 1973.

On October 29, the National Football League and the Cleveland Browns Football Club filed a joint motion to dismiss. On November 12, National Broadcasting Company, American Broadcasting Company, Columbia Broadcasting Systems, W.K.Y.C. - T.V. 3, and W.E.W.S. - T.V. 5 filed another joint motion to dismiss. Finally, on December 7, W.J.W. - T.V. 8 also filed a motion to dismiss. The parties filed a stipulation pursuant to Fed. R. Civ. P. 41(a)(1), agreeing to voluntarily dismiss

without prejudice defendants Columbia Broadcasting Systems and W.J.W. - T.V. 8 on May 9, 1994. On May 18, the district court granted the remaining defendants' motions to dismiss under Rule 12(b)(6). This timely appeal followed.

On appeal, Stoutenborough and Self-Help for Hearing Impaired Persons claim that their action is based "primarily and fundamentally" upon Title III of the Americans With Disabilities Act. In essence, they argue that the "blackout rule" unlawfully discriminates against them in a disproportionate way because they have no other means of accessing the football game "via telecommunication technology." Thus, they are denied the "substantially equal" access that they claim the Americans With Disabilities Act requires. Stoutenborough and Self-Help for Hearing Impaired Persons also argue that the "service" at issue is the live television transmission of football games that are offered as services, benefits, or privileges in places of public accommodation.

At the outset, the defendants contend that the National Football League's "blackout rule" is not discriminatory: it applies equally to both the hearing and the hearing impaired populations. We agree. The "blackout rule" prohibits both the hearing and the hearing-impaired from viewing "blacked out" home football games. As the defendants also point out, the fact that hearing individuals may be able to listen to a "blacked out" game, if it is broadcast by radio, is irrelevant, because the "blackout rule" neither reaches nor impacts radio broadcasting. Thus, the radio broadcast of "blacked-out" games does not render the "blackout rule" discriminatory, because the rule itself impacts only the televised broadcast of home football games. Moreover, with the advent of devices that make radio transmissions accessible to persons with hearing impairments, the hearing and

the hearing-impaired populations attain equal footing as radio broadcasts become available to both.

The defendants also maintain that none of the statutes upon which Stoutenborough and Self-Help for Hearing Impaired Persons rely provides them a cause of action, in light of the plain language of those statutes. *E.g., United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Again, we agree. Title III of the Americans With Disabilities Act provides, in relevant part:

> No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a). The district court correctly observed:

> The discrimination against which the statute is directed is based on the practices or procedures of the public accommodation itself which may deny the handicapped equal access to a service which that accommodation offers. The televised broadcast of football games is certainly offered through defendants, but not as a service of public accommodation. It is all of the services which the public accommodation offers, not all services which the lessor of the public accommodation offers which fall within the scope of Title III.

Appendix A

First, none of the defendants falls within any of the twelve "public accommodation" categories identified in the statute. 42 U.S.C. § 12181(7). Also, the prohibitions of Title III are restricted to "places" of public accommodation, disqualifying the National Football League, its member clubs, and the media defendants. As the applicable regulations clarify, a "place" is "a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the" twelve "public accommodation" categories. 28 C.F.R. § 36.104. "Facility," in turn, is defined as "all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located." *Id.*

In addition, the "service" that Stoutenborough and Self-Help for Hearing Impaired Persons seek to obtain — the televised broadcast of "blacked-out" home football games — does not involve a "place of public accommodation." Although a game is played in a "place of public accommodation" and may be viewed on television in another "place of public accommodation," that does not suffice. Moreover, the plaintiffs' argument that the prohibitions of Title III are not solely limited to "places" of public accommodation contravenes the plain language of the statute.

Titles I and II of the Americans With Disabilities Act are also inapplicable. Title I prohibits employment discrimination by a "covered entity," which is defined as "an employer, employment agency, labor organization, or joint labor-management committee." 42 U.S.C. § 12111(2). Title II prohibits discrimination by a "public entity," which is defined as any state and local government and its agencies and instrumentalities, as well as the National Railroad Passenger Corporation and any

commuter authority. 42 U.S.C. §§ 12131(1) and 12132. By their terms then, these statutes are inapplicable to the factual situation before us.

Plaintiffs' argument that Title IV of the Americans With Disabilities Act, when read in conjunction with the Television Decoder Circuitry Act, is broad enough to protect hearing impaired individuals in the context of television broadcast services is similarly unavailing. The provisions of Title IV amend the Communications Act of 1934, to accommodate the hearing impaired in the provision of telephone services and to require closed captioning in certain types of television announcements. Section 401 of the Americans With Disabilities Act requires certain "common carriers" to provide telecommunications relay services. However, because the Title IV definition of "common carriers" is premised upon the Communications Act of 1934 definition at 47 U.S.C. § 153(h), it is clear that the "common carriers" referred to in Title IV do not include television broadcasters. *See* 47 U.S.C. § 225(a)(1). Section 402 requires television public service announcements that are produced or funded by a federal agency to include closed captioning. 47 U.S.C. § 611. Therefore, these provisions are irrelevant to the broadcast of National Football League games and the "blackout rule."

Moreover, the Communications Act of 1934, 47 U.S.C. § 151, et seq., which established the regulatory scheme governing the Federal Communications Commission, does not indicate congressional intent to apply the Americans With Disabilities Act to the "blackout rule." The "public interest" standard articulated in Section 309(a) of the Communications Act does not create a private cause of action. *E.g., Schnapper v. Foley,* 667 F.2d 102, 116-17 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 948

(1982). This standard does not incorporate the Americans With Disabilities Act's anti-discrimination requirement so as to prohibit the "blackout rule."

Finally, the Television Decoder Circuitry Act of 1990, which simply requires that all television sets manufactured in or used in the United States having thirteen-inch screens and above, must "be equipped with built-in decoder circuitry designed to display closed captioned television transmission," 47 U.S.C. § 303(u), is inapplicable. None of the defendants meet the "manufacturer" criterion set forth in this statute.

We have accepted the facts alleged in the complaint as true, as we must under a 12(b)(6) motion to dismiss for failure to state a claim. *Nishiyama v. Dickson County,* 814 F.2d 277, 283 (6th Cir. 1987). The law as we have reviewed it is clear. These facts simply do not establish the violation of a protected right. Therefore, we believe that the district court was correct in finding that Stoutenborough and Self-Help for Hearing Impaired Persons failed to state a cognizable claim. Accordingly, the judgment of the district court is AFFIRMED.

APPENDIX B — JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED JULY 14, 1995

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 94-3664

THOMAS STOUTENBOROUGH, et al.,

Plaintiffs-Appellants,

v.

NATIONAL FOOTBALL LEAGUE, INC., et al.,

Defendants-Appellees.

Before: **Martin** and **Siler**, Circuit Judges;
Joiner, District Judge.

JUDGMENT

ON APPEAL from the United States District Court for the Northern District of Ohio at Cleveland.

THIS CAUSE was heard on the record from the district court and was argued by counsel.

IN CONSIDERATION WHEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

Appendix B

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Leonard Green, Clerk

A True Copy.
Attest:

s/ illegible
Deputy Clerk

Issued as Mandate: August 7, 1995

COSTS: None

Filing Fee .....$
Printing .....$

Total .....$

APPENDIX C — MEMORANDUM AND ORDER OF THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO, EASTERN DIVISION FILED MAY 18, 1994

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 93CV1959

HON. GEORGE W. WHITE

THOMAS STOUTENBOROUGH, et al.,

Plaintiffs,

vs.

THE NATIONAL FOOTBALL LEAGUE, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the Court on Defendants National Football League (hereinafter "NFL"), Cleveland Browns (hereinafter "Browns"), Motion to Dismiss Plaintiffs complaint in which defendants Gillette Communications of Ohio, Inc. (hereinafter "Gillette"), National Broadcasting Company, Inc., American Broadcasting Company, Inc., Columbia Broadcasting System, Inc., WEWS-TV Channel 5 and WKYC-TV Channel 3 (hereinafter "Media Defendants") have joined. The Defendants collectively maintain that the Plaintiffs have failed to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Appendix C

Plaintiff Thomas Stoutenborough (hereinafter "Stoutenborough") has alleged that the defendants' "Local Black-Out"[1] (hereinafter "the Rule") constitutes unlawful discrimination against the hearing impaired under the Americans With Disabilities Act (hereinafter "ADA"), Title II of the Communications Act of 1934, the Television Decoder Circuitry Act of 1990, and the Rehabilitation Act of 1973. The Rule prohibits the live local telecast of home football games if there is not a 'sell-out' of stadium seats within seventy-two (72) hours of the start of the game. As a hearing impaired individual, Stoutenborough claims that he is discriminatorily prohibited from listening to a radio and enjoying the excitement of a live Browns' football game when the Rule is implemented.

Stoutenborough is joined in this Complaint by the Self-Help For Hearing Impaired Persons (SHIP), a non-incorporated association of handicapped hearing impaired individuals organized to assist other hearing impaired individuals within the Greater Cleveland Area.[2] All members of SHIP share the same disability and claim to be fans of professional football who are denied access to radio broadcasts of football contests when Defendants' Rule is implemented.

Before an action may be dismissed under Rule 12(b)(6) the court must find "beyond doubt that the plaintiffs can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Hospital Bldg. Co. v. Trustees of Rex Hosp.*, 425 U.S. 738,

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1. In 1961, the NFL member clubs were granted an antitrust exemption by Congress entitled the Sports Broadcasting Act (SBA). The SBA permitted the Rule wherein broadcast restrictions "with the home territory of a member club of the league on a day when such club is playing a game at home." 15 U.S.C. § 1292.

2. Stoutenborough is Director of SHIP.

746 (1976). All factual allegations are deemed admitted, and when an allegation is capable of more than one inference, it must be construed in favor of the plaintiffs. *Sinay v. Lamson & Sessions Co.*, 948 F.2d 1037, 1039-40 (6th Cir. 1991).

Plaintiffs claim that the Defendants' practice of 'blacking-out' football contests, which would otherwise be broadcast on television, discriminates against the hearing impaired. They maintain that defendants' practice is denying them their legally entitled equal access to the televised medium. Plaintiffs contend that federal anti-discrimination and communication statutes require that defendants accommodate the hearing impaired television viewer because the television airwaves they use to broadcast their product are public airwaves which are administered by an Executive Agency and, therefore, must serve the public interest.

AMERICANS WITH DISABILITIES ACT OF 1990

a. Titles I & II

Plaintiffs claim that the intent of Title I of ADA is "to afford hearing impaired individuals ... equal access to existing programmed telecommunications of sporting events which are performed at places of public accommodation and which are televised to places of public accommodation over the public airwaves." (Pls. ['] Br. Opp'n Mot. Dismiss at 8). There is no foundation for this intent based on existing case law, however.

Title I of the ADA states, in part, that

> No covered entity shall discriminate against a qualified individual with a disability because

> of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions and privileges of employment.

42 U.S.C. § 12112 (1993).

The covered entity to which the statute refers is defined as "an employer, employment agency, labor organization, or joint labor management committee." 42 U.S.C. § 12111(2). Inasmuch as the defendants are neither plaintiffs' employers nor a labor organization, they have not successfully overcome defendants' failure to qualify as a covered entity under the plain meaning of the statute. Since it is clear that each Title of the ADA relates to discrimination in employment and plaintiffs' Brief in Opposition to defendants' motion does not attempt to elucidate their cause of action under either Title of the United States Code, plaintiffs' claims under Titles I and II of the ADA are dismissed with prejudice.

b. Title III

Plaintiffs' have principally embraced the tenents of Title III in their attempt to argue that there are genuine issues of material fact in dispute. Title III of the ADA which mandates:

> No individual shall be discriminated against on the basis of disability in the full and equal employment of goods, services, facilities, privileges, advances or accommodations of any place of public accommodation by any

> person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182(a) (1994) It is the Plaintiffs' argument that the Rule denies them the full and equal services of a public accommodation.

It is undisputed that a stadium in which football games are played meets the statutory definition of a public accommodation. 42 U.S.C. § 12181(7)(c) What is in dispute is the plaintiffs' characterization of 'services' as the televised transmission of a football game. Under their scenario, plaintiffs argue that defendants have violated Title III by not providing the hearing impaired equal access to games which are not televised when the black-out rule is imposed. They argue that while non-handicapped fans can listen to a radio at home, the hearing impaired are forced to either travel outside the local viewing area to watch a televised game or buy a ticket to the stadium to watch the game when the Rule is imposed. Plaintiffs believe that they are entitled to the same convenience of access, if not the same instruments through which the nonhandicapped enjoy sporting events.

The difficulty with Plaintiffs' characterization of services is the notion that anyone who attends the stadium is attending for the 'service' of a televised game. The discrimination against which the statute is directed is based on the practices or procedures of the public accommodation itself which may deny the handicapped equal access to a service which that accommodation offers. The televised broadcast of football games is certainly offered through the defendants, but not as a service of the public accommodation. It is all of the services which the public accommodation offers, not all services which the lessor of

the public accommodation offers which fall within the scope of Title III. Plaintiffs have not argued that when the Rule is imposed, the services at the stadium become discriminatory. In fact, the services remain the same. In order for the statute to apply, plaintiffs would have to argue that the Rule is denying them full and equal employment of services of the stadium. This is simply not the plaintiffs argument.

d. Title IV

Plaintiffs claim that while their complaint is not based strictly on Title IV of the ADA, when read in conjunction with the Television Decoder Act "broadcasters who have decided to broadcast programs will be required to do so with close-captioning in the future." However, the intent of Section 401(a) of Title IV is explicit. Titled, "Close-captioning of Public Service Announcements", the legislature sought to provide equal access to all public service announcements if it were to serve its entire audience. What defendants televise, however, is not a public service and is not funded with public dollars and is not provided by a public entity. As a private entity, defendants are not dependent on tax dollars for revenue.

It also cannot be ignored that, unlike telephone and telegraph companies, the Supreme Court did not include television broadcasters in the definition of common carriers under Title IV. In spite of Plaintiffs' claims, the extensive controls of the Communications Act do not apply to television broadcasters under Title IV. *United States v. Radio Corp. of America,* 358 U.S. 334, 347-48 (1959) Since the Title IV definition of 'common carrier' is based on the Communications Act definition at 47 U.S.C. § 153(h), it is apparent that the common carriers referred to in Title IV do not encompass television broadcasters. *See* 47

U.S.C. § 225(a)(1). As such, plaintiffs have not stated a colorable claim under Title IV or any other Title of the ADA. Plaintiffs' Title IV claims under the ADA are dismissed with prejudice.

REHABILITATION ACT OF 1973

Plaintiffs also claim that defendants have violated § 504 of the Rehabilitation Act of 1973 which states, in part:

> No otherwise qualified individual with a disability in the United States ... shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency

29 U.S.C. § 794(a) (1993).

Plaintiffs attempt to apply this statute on the basis that because defendants' right to use public airwaves can only be licensed by an executive agency (e.g. the Federal Communications Commission), it is a program conducted by an Executive agency. However, the statute's antidiscrimination mandate is plainly directed to any program or activity which is conducted under the control of an Executive agency. The fact that the defendants' broadcasts are licensed by the FCC does not put that broadcast under the control of the FCC within the meaning of the statute. *See also, Disabled in Action v. Baltimore,* 685 F.2d 881 (4th Cir. 1982) (baseball club's use of stadium not considered program or activity receiving federal financial assistance within the meaning of the Rehabilitation Act).

Appendix C

In addition to Plaintiffs' failure to prove that the televised broadcasts are controlled by a federal agency they have not alleged that the defendants are currently or have ever received federal financial assistance. Therefore, Plaintiffs allegations of discrimination pursuant to the Rehabilitation Act are dismissed with prejudice.

COMMUNICATIONS ACT OF 1934

In their Opposition Brief to Defendants' motion to dismiss, plaintiffs claim that they do not predicate an independent cause of action upon either the Communications Act or the Television Decoder Circuitry Act, but that the "public interest" standard set forth in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, imposes a duty, *in pari materia,* upon defendants to provide equal access to telecommunication services for the hearing impaired.

The Communications Act addresses the Federal Communications Commission's (FCC) considerations in determining whether the public interest will be served by granting an application for a station license. 47 U.S.C. § 309(a). However, it has been clarified that the "public interest" provision in the Communications Act does not provide a private right of action. *See Schnapper v. Foley,* 667 F.2d 102, 116-117 (D.C. Cir. 1981), *cert. denied,* 455 U.S. 948 (1982); *Rokus v. American Broadcasting Co., Inc.,* 616 F. Supp. 110 (S.D.N.Y. 1984) Therefore, plaintiffs lack standing to bring a suit under the Communications Act and their claim is dismissed with prejudice, accordingly.

Appendix C

TELEVISION DECODER CIRCUITRY ACT OF 1990

Effective July 1, 1993, the FCC was mandated to

> [r]equire that apparatus designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed captioned television transmission when such apparatus is manufactured in the United States or imported for use in the United States, and its television picture screen is 13 inches or greater in size.

47 U.S.C. § 303(u) (1991).

It is apparent from the language of the statute that any violation of the Decoder Act would involve a party which manufactures apparatus designed to receive television picture broadcasts with sound. None of the defendants meet their criterion. As such, plaintiffs' claim under the Television Decoder Act is dismissed with prejudice.

For the reasons stated above, all claims set forth by the plaintiffs' in their Amended Complaint are dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/ George W. White
George W. White
UNITED STATES DISTRICT JUDGE

Appendix C

WHITE, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. 93CV1959

THOMAS STOUTENBOROUGH, et al.,

Plaintiffs

v.

THE NATIONAL FOOTBALL LEAGUE, et al.,

Defendants

ORDER

Pursuant to this Court's Memorandum and Order filed contemporaneously with this Order,

IT IS ORDERED that all claims set forth by the plaintiffs in their Amended Complaint are dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED.

s/ George W. White
George W. White
United States District Judge